meaning in both paragraphs of the proviso and in each case they have reference only to occupation debts which, under the agreement between the parties, would have been repayable in occupation currency.

Many things find their way into saving clauses *ex abundanti cautela* and, in my view, that is the reason why the reference to the 12th August, 1945, was included in paragraph (a) of the proviso to section 6.

For the reasons I have already given I am of the opinion that this appeal should be dismissed with costs.

Abbott, J.: — I concur.

Wilson, J. : — I concur.

Appeal dismissed.

TAN YOU v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Abbott, J.) Malacca, February 21, 1951]

Emergency (Rubber Control) Regulations, 1949, Regulation 4(1) — Recent possession of stolen property — Explanation given by accused — Principle to be applied in possession cases.

Where the only evidence against the accused is that he was in unlawful possession of property the court may infer guilty knowledge (i) if the accused has offered no explanation or (ii) if it is satisfied that any explanation offered is untrue; but if the explanation offered leaves the court in doubt as to whether it is true or not, the case has not been proved and the proper verdict should be not guilty.

Case referred to :—

(1) *Rex v. Aves* (1950) 2 All E.R. 330.

MAGISTRATE'S APPEAL.

C. S. Jayaswal for the appellant.

H. Shepherd (Federal Counsel) for the respondent.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Abbott, J. : — The appellant was convicted by the Magistrate at Jasin of being in unlawful possession of fifty-four sheets of rubber contrary to the provisions of regulation 4(1) of the Emergency (Rubber Control) Regulations, 1949. This is an appeal against conviction.

The appellant, who owns a small rubber estate, was apprehended by a police officer while he was carrying the sheets of rubber. In the words of the police officer the appellant, when asked where he got the rubber, "could not give a satisfactory explanation". The Magistrate rightly held that the appellant had a case to answer.

The appellant, in evidence, gave an explanation of how he came by the rubber — that part was the produce of his own estate and part supplied to him by a friend. He did not call any evidence which would have enabled the Magistrate to have done so. It was, therefore, impossible to say with certainty that the appellant's explanation was untrue.

In deciding all cases such as this, where the burden of proving lawful possession of property is thrust upon the accused, the proper principle to apply is that laid down in the case of *Rex v. Aves*[1], which may, for the purposes of this appeal, be epitomised as follows. Where the only evidence against the accused is that he was in unlawful possession of property the court may infer guilty knowledge (i) if the accused has offered no explanation or (ii) if it is satisfied that any explanation offered is untrue; but if the explanation offered leaves the court in doubt as to whether it is true or not, the case has not been proved and the proper verdict should be not guilty. It does not appear from the record that the Magistrate bore this principle in mind when deciding the case.

The appeal is allowed.

H. G. HAMMETT v. NORTHERN MALAYA NEWSPAPERS LTD. & ANOR.

[Orig. Civ. Juris. (Jobling, J.) May 9, 1951]

[Penang Civil Suit No. 54 of 1951]

Specific performance — Agreed compromise of — Libel action — Publication of apology — Whether application by motion misconceived.

This matter came before the Court on a Motion for an order for specific performance of the terms of a compromise agreed upon by the parties in settlement of this section for damages for libel.

It appeared from the affidavits filed that the defendants agreed to publish an apology on certain terms and to pay $500 to named charities. It was not specifically stated but was implied that the apology was to be published in the "Straits Echo" in Penang and the plaintiff does not dispute this. The defendants subsequently found that it was impossible to publish the apology because some 41 members of their staff tendered their resignation as soon as it was known that it was intended to publish an apology and without their assistance the whole issue of the newspaper would be stopped.

Held, that it was an obvious and well-established rule that the Court will not make an order which it cannot enforce. The defendants had a complete answer to the order asked for and as the defendants' staff were not parties to the proceedings they could not be ordered to publish the newspaper.

Held also, that a compromise may be converted into an Order of Court upon Motion in proceedings pending before the Court and enforced like a judgment.

MOTION.

F. G. Pooley for the plaintiff.

T. E. Conaghan for the defendants.

Jobling, J. : — This matter came before the Court on a Motion for an order for specific performance of the terms of a compromise agreed upon by the parties in settlement of this action for damages for libel.

It appeared from the affidavits filed that the defendants agreed to publish an apology on certain terms and to pay $500/- to named charities. It was not specifically stated but was implied that the apology was to be published in the "Straits Echo" in Penang and the plaintiff does not dispute this.

The defendants subsequently found that it was impossible to publish the apology because some 41 members of their staff tendered their resignations as soon as it was known that it was intended to publish an apology and without their assistance the whole issue of the newspaper would be stopped.

Mr. Conaghan for the defendants submitted the proceedings by way of Motion were misconceived and that separate proceedings were necessary to enforce a compromise. It appears clear however that although this was the former practice a compromise may now be converted into an order of Court upon a Motion in proceedings pending before the Court and enforced like a judgment. (See Daniel's Chancery Practice, Vol. 1, page 646 and *In re Gaudet Freres Steamship* there cited).

In my opinion therefore these proceedings are in order.

Mr. Pooley for the plaintiff asked the Court to order the specific performance of the agreement notwithstanding the alleged impossibility and said plaintiff would agree to the publication of the apology in the "Straits Times".

After an adjournment to take instructions Mr. Conaghan said defendants did not authorise publication in the "Straits Times", they took up the position that they had agreed to publication in the "Straits Echo" and as that was impossible the action must go on.

Mr. Pooley for the plaintiff asked the Court to order publication in the "Straits Times".

The two points for decision were therefore whether the Court should order specific performance of the compromise as it stood and if not, whether it should disregard the agreement to publish in the "Straits Echo" and order the apology to be published in the "Straits Times".

It is an obvious and well-established rule that the Court will not make an order which it cannot enforce. The defendants had a complete answer to the order asked for and as the defendants' staff are not parties to these proceedings they could not be ordered to publish the newspaper.

The probability that an order to publish the apology would not be carried out was clear and in that event there would be no way of enforcing it. In these circumstances the order for specific performance of the compromise as it stands was refused.

As regards the submission that publication in the "Straits Times" should be ordered I think this amounts to a suggestion that I should amend the terms of the compromise to enable me to order its performance. It is true that the agreement to publish in the "Straits Echo" is a subsidiary term of the compromise and the main purpose of the parties would be given effect to by publication in the "Straits Times". But I considered it would be a dangerous precedent to interfere with the terms of an agreement in order to enforce it and I know of no authority for doing so. I was therefore unable to agree with the suggestion.

Motion refused with costs.

Motion dismissed.

THAKURDAS KESSAMALL v. WASSIAMULL ASSOMULL & CO.

[Court of Appeal (Murray-Aynsley, C.J., Abbott, Ag. C.J. (F.M.) and Rogers, J.) November 1, 1951]

[Singapore — Civil Appeal No. 7 of 1951]

Landlord and Tenant — Control of Rent Ordinance, s. 14(1)(f) — Recovery of possession — Hardship — Comparative hardship — Finality of decision of trial Judge.

This appeal arose out of an action by the landlord (appellant). The tenant relied on the protection of the Control of Rent Ordinance, section 14(1)(f). At the trial the learned Judge found that the tenant had made out a case of greater hardship and refused possession. The landlord appealed.

Held, that the assessment of the extent of the hardship on both sides is exclusively a matter for the judge at first instance. Appeal dismissed.

The facts and arguments appear sufficiently from the judgment of Brown, Ag. C.J.

Coplans v. King[1] applied.

Cases referred to :—

(1) *Coplans v. King* (1947) 2 All E.R. 393.
(2) *Chandler v. Strevett* (1947) 1 All E.R. 164.
(3) *Robinson v. Donovan* (1946) 2 All E.R. 731.